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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/375,081	08/16/99	GONZALEZ	F MIO-007-NA

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EXAMINER

MUNSON, G

ART UNIT

PAPER NUMBER

2811

DATE MAILED:

03/20/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

375,081

Applicant(s)

F. GONZALEZ ET AL

Examiner

G. MUNSON

Group Art Unit

2811

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 15-19, 23 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 15-19, 23 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3 ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other \_\_\_\_\_

Office Action Summary

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That parent application S.N. 987,819 has issued as a patent needs to be inserted in the specification.

Claims 15, 17, 19 and 23 are rejected as double patenting of the non-statutory type over claims of Gonzalez et al. P.N. 6,005,273, which issued from S.N. 987,819. These present claims as well as the patent claims, appear directed towards the embodiments of Figs. 1-3, 7, 8, 11 and 12. Thus these present claims would be double patenting.

This double patenting rejection is based on a judicially established doctrine grounded in public policy to "prevent unjustified timewise extension of the right to exclude granted by a patent". *In re Schneller*, 158 USPQ 210 (CCPA 1968). Also note the public policy requirement in 37 CFR1.321 that a patent granted on this application and the Gonzalez et al. Patent '273 be commonly owned. See MPEP 804 for a discussion of *Schneller*. A timely filed terminal disclaimer in compliance with 37 CFR1.321 would overcome the above double patenting rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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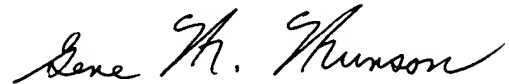
Claims 15, 17, 19 and 23 are rejected under 35 U.S.C. 102 as unpatentable as shown by Rao '139. See Figs. 3, 5, with "secondary" oxide layer 21 and "spacer" comprising "second" gate 16.

Claims 15-19 and 23 are rejected under 35 U.S.C. 102 as unpatentable as shown by Rao '263. See Figs. 3, 5, 7, with "secondary" oxide layer 21 and "spacer" comprising "second" gate 16 and "third" gate 41.

Rao '139 and '263 are of record in S.N. 987,819, and were cited by applicants.

No claim is allowed.

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03/11/00



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EXAMINER  
GROUP ART UNIT 2811